

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate ) DOCKET NO. 910980-TL  
increase by UNITED TELEPHONE ) ORDER NO. PSC-92-0112-PCO-TL  
COMPANY OF FLORIDA. ) ISSUED: 3/27/92  
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ORDER GRANTING IN PART AND DENYING IN PART  
UNITED TELEPHONE COMPANY OF FLORIDA'S  
MOTION TO COMPEL DISCOVERY

On December 23, 1991, United Telephone Company of Florida (United) its first set of interrogatories and request for production of documents on the Florida Cable Television Association (FCTA). The FCTA served its responses on January 22, 1992. In its response, the FCTA objected to responding to Interrogatories Nos. 4 through 7 and 10 through 14. Additionally, FCTA objected to responding to Production of Documents Nos. 1, 3 through 5, and 7. United filed a Motion to Compel Discovery on February 5, 1992, asking the Prehearing Officer to compel the FCTA to respond to United's discovery requests. FCTA filed a response to United's motion to compel on February 25, 1992. Oral argument by the parties on the motion to compel was heard on March 20, 1992.

Interrogatory No. 4 seeks a list of services that the FCTA or each of its members obtains from United. Interrogatories 5 through 7 seek information on the corporate structure, state of incorporation and the names of individuals responsible for various internal operations of each member of the FCTA. Interrogatories 10 through 14 seek information related to the nature of the services provided by the members of the FCTA as well as the rates for such services.

Production of Documents (POD) No. 1 seeks all documents which discuss intervention in telephone company regulatory proceedings or in this rate case. POD Nos. 3 and 5 seek to discover documents that discuss planned or future video services and two-way voice, data or broadband services by cable companies. POD No. 4 asks for documents that discuss cross-subsidization by United of planned or future video services. POD No. 7 seeks a copy of the corporate organizational structure of the FCTA members operating in United's service area.

FCTA objected and refused to respond to Interrogatory No. 4 on the grounds that this information is already possessed by United in its customer records and is not an appropriate matter for discovery. FCTA objected and refused to respond to the remainder of the interrogatories and the PODs at issue on the grounds that

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the information sought is not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

In its Motion to Compel, United argues that its discovery efforts were narrowly drawn to seek information on matters that the FCTA and its members asserted as facts supporting its petition to intervene. Specifically, United seeks information regarding FCTA's assertion that its substantial interests were affected because some of its members were consumers of services and that its members are or will be competitors of United's for planned or future video services. In support of its motion, United argues that it is entitled to discovery to test the sufficiency of the allegations upon which the FCTA bases its claims of standing.

The FCTA's response restates its argument that the information sought in the interrogatories and PODs not responded to is not relevant to the issues to be addressed and not reasonably calculated to lead to the discovery of admissible evidence. FCTA further argues that such discovery serves only to harass FCTA and its members as well as seek to prevent FCTA and its members from expressing their opinions. FCTA also asserts that its standing is clearly established by Sections 364.01, 364.338 and 364.3381, Florida Statutes, and the Commission's decisions in Orders Nos. 24877 and 23474. FCTA closes by stating that it and its members are entitled to participate in the construction and application of the revised provisions of Chapter 364, Florida Statutes, both as ratepayers and potential competitors without being subjected to redundant and unnecessary discovery efforts.

Upon review of the discovery requests at issue here and consideration of the arguments and pleadings of the parties, United's motion to compel should be granted in part and denied in part as described in more detail below. Generally, United is entitled to discovery to obtain information to test the sufficiency of allegations of a party's claim of standing. Such information is relevant to determine whether a party has standing to participate in a proceeding as well as the scope of a party's participation in such proceeding. FCTA and its members are not immune from discovery simply because the services it provides are not directly at issue in this proceeding. However, the scope of the discovery is not unlimited and discovery will not be allowed as a vehicle for harassment.

The information sought in Interrogatory No. 4 is business information belonging to United and already in United's possession.

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In its response to Interrogatory No. 3, FCTA provided the names and locations of all members within United's service area. If FCTA has provided that information appropriately, then United should be able to retrieve the requested information from its business records by checking its customer records under the names provided in answer to Interrogatory No. 3. Since United can get the information it requests from its own records, discovery is not necessary. Therefore, the motion to compel is denied on Interrogatory No. 4.

The request in Interrogatory No. 10, seeking the rates of the services provided by FCTA's members, does not appear relevant. The rates for such services are not at issue in this proceeding and are not related to the allegations that FCTA's substantial interests are affected by planned or future video services to be offered by United. Therefore, the motion to compel is denied regarding Interrogatory No. 10.

With respect to the information sought in Interrogatories 11 through 14, and PODs 3, 4 and 5, pertaining to the services provided by the members of the FCTA that may be in competition with planned or future video services provided by United, such information is relevant to the allegations of competitive standing and the scope of the FCTA's participation in the proceeding. Accordingly, the motion to compel is granted for those interrogatories and production of documents requests.

During oral argument on March 20, 1992, Counsel for United essentially waived his request to compel responses to Interrogatories Nos. 5 through 7, and PODs 1 and 7. Therefore, I do not reach the question of the motion to compel regarding those issues. I further, note in passing that FCTA's response was not timely filed. Since that matter was not raised I do not reach that question.

In view of the short time remaining before the hearing, the FCTA is directed to respond to the interrogatories for which the motion to compel has been granted within 7 days of the date of this Order. The responses shall be provided to United by hand delivery or facsimile, to be received by United no later than 5:00 p.m., April 3, 1992.

Based on the foregoing, it is


ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that United Telephone Company of Florida's Motion to Compel is

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granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED the Florida Cable Television Association shall respond to the discovery requests set forth in the body of this Order within the time limits and in the manner describer in the body of this Order.

By ORDER of Commissioner Susan F., Clark, as Prehearing Officer, this 27th day of MARCH, 1992.

  
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SUSAN F. CLARK, Commissioner  
and Prehearing Officer

( S E A L )

PAK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in



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the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.